

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Dudley W. & Louise S Lee)
 Ward 057, Block 001, Parcel 00021) Shelby County
 Residential Property)
 Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$1,029,800	\$1,299,100	\$324,775

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 20, 2007 in Memphis, Tennessee. The taxpayer was represented by Hunter Humphreys, Esq. The assessor of property was represented by John Zelinka, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 36 Wychewood Drive in Memphis, Tennessee.

The assessor of property originally appraised subject property for tax years 2005 and 2006 as follows:

Land Value	\$269,300
Improvement Value	\$508,400
Total Value	\$777,700
Assessment	\$194,425

On February 1, 2007 the assessor of property issued assessment change notices which indicated an "error" had been discovered and the 2005 and 2006 appraisals had been changed as follows:

Land Value	\$ 269,300
Improvement Value	\$1,029,800
Total Value	\$1,299,100
Assessment	\$ 324,775

The taxpayer filed an appeal with the State Board of Equalization which was received on March 8, 2007. The taxpayer does not contest the assessor's actions for 2006 and the parties have stipulated to a value of \$1,225,000 for that tax year. With respect to tax year

2005, however, the taxpayer maintains that the assessor improperly revised the appraised value.

For ease of understanding, the administrative judge will briefly summarize the pertinent statutes. Tennessee Code Ann. § 67-5-509(d) allows the assessor until March 1 of the second year following the tax year to issue a correction of error. Tennessee Code Ann. § 67-5-509(f) defines a correctable error as follows:

Errors or omissions correctable under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment. . . .

Tennessee law also provides for back assessments and reassessments in appropriate circumstances. Tennessee Code Ann. § 67-1-1001(a) defines those terms as follows:

- (1) 'Back assessment' means the assessment of property, including land or improvements not identified or included in the valuation of the property, that has been omitted from or totally escaped taxation; and
- (2) 'Reassessment' means the assessment of property that has been assessed at less than its actual cash value by reason of connivance, fraud, deception, misrepresentation, misstatement, or omission of the property owner or the owner's agent.

The time period for making a back assessment or reassessment is governed by Tenn. Code Ann. § 67-1-1005(a) which provides in relevant part as follows:

A back assessment or reassessment must be initiated prior to September 1 of the year following the tax year for which the original assessment was made, unless the omission or underassessment resulted from failure of the taxpayer to file the reporting schedule required by law, from actual fraud or fraudulent misrepresentation of the property owner or the property owner's agent, or from collusion between the property owner or the property owner's agent and the assessor. In the latter cases, a back assessment or reassessment must be initiated prior to three (3) years from September 1 of the tax year for which the original assessment was made.

The taxpayer essentially contended that the assessor's revised appraisal for tax year 2005 cannot be upheld as a correction of error or back assessment/reassessment. The taxpayer argued that the revised appraisal did not involve an "obvious clerical mistake" and cannot be considered a correctable error. The taxpayer asserted that if the assessor believed subject residence had escaped taxation, the deadline for initiating a back assessment was September 1, 2006.

Not surprisingly, the assessor of property maintained that she properly made a correction of error. As will be discussed immediately below, however, it is unclear exactly what error the assessor sought to correct.

Unfortunately, the assessment change notice does not identify the error purportedly being corrected. The notice simply states that “[i]n reviewing our records . . . we found an error which existed for tax year 2005. . .”

At the hearing, it initially appeared from counsel’s opening statement that subject residence had not been assessed in 2004 and was being added to the tax rolls effective January 1, 2005. The assessor effectively abandoned this position when staff appraiser Nathan Chamness testified.

The administrative judge finds Mr. Chamness initially testified that the residence had been prorated for tax year 2004 pursuant to Tennessee Code Ann. § 67-5-603(b)(1). According to Mr. Chamness, the prorated value was erroneously carried forward for 2005 due to a clerical error.

The administrative judge finds Mr. Chamness subsequently testified that the assessor had appraised subject property as having 5,185 square feet of living area. Upon discovering that a fee appraiser had appraised subject residence assuming it contained 5,834 square feet of living area, the assessor recalculated the square footage utilizing both a sketch of the property and aerial imaging.

The administrative judge finds that the assessor’s revised appraisal for tax year 2005 must be set aside regardless of whether it is characterized as a correction of error or back assessment/reassessment. The administrative judge finds that the revised appraisal could not have been a back assessment because subject residence was initially appraised at \$508,400 as of January 1, 2005. The administrative judge finds the assessor did not contend that any basis existed for a reassessment under Tenn. Code Ann. § 67-1-1001(a)(2).

The administrative judge finds that the assessor’s actions cannot be sustained under the correction of error statute. The administrative judge finds that the procedure for making a correction of error is set forth in Tenn. Code Ann. § 67-5-509(c) which provides in relevant part as follows:

- (1) Whenever the assessor shall discover, or it has been called to such assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or municipal collector, *the assessor shall certify in writing the facts to the trustee or municipal collector*, who shall receive the tax on the corrected assessment and report the difference in the trustee's or municipal collector's errors and releasement list, and shall make such other corrections as such certificate may show right and proper.

(2) *The assessor shall certify to the trustee or municipal collector the facts and the reasons for such a change in such assessment, and the tax shall be collected upon the revised assessment.*

[Emphasis supplied]

* * *

The administrative judge finds that the Notice of Assessment Change issued on February 1, 2007 provides in pertinent part as follows:¹

* * *

In reviewing our records on the above described property, we found an error which existed for the assessment year 2005. Per TCA 67-5-509(c) (1), the assessor is required to correct the assessed value and report this change to the County Trustee and any municipal collector.

* * *

This appraisal/assessment information is being provided to the City of Memphis Treasurer & County Trustee.

* * *

The administrative judge finds that there is nothing in the record to indicate that the trustee or municipal collector were provided with a separate document specifying the facts and reasons for the assessment change. Accordingly, the administrative judge must presume that the trustee and municipal collector received the same notice as the taxpayer.

The administrative judge finds that the above-quoted notice does not comply with Tenn. Code Ann. § 67-5-509(c) because the facts and reasons for the changes are not stated. The administrative judge finds that in *Lemm Services, Inc.* (Shelby Co., Tax Year 1996) the Assessment Appeals Commission ruled that “the complaint procedure must be strictly followed to assure the validity of the back assessment.” Final Decision and Order at 2. The Commission concluded that because the citation was not sworn and did not state a basis for the back assessment or reassessment, the document was defective and the back assessment or reassessment was therefore void. The administrative judge finds the Commission’s ruling in that case equally applicable to a correction of error proceeding.

Notwithstanding the foregoing, the administrative judge finds that the correction for 2005 must be set aside regardless of which portion of Mr. Chamness’ testimony accurately summarizes the reason for the correction. The administrative judge finds that the 2004 prorated value was not simply carried forward to 2005 due to a clerical error. The

¹ It appears that all Shelby County assessment change notices involving corrections of error utilize the same language with the exception of the tax year. Thus, it also appears that the notices all utilize generic “boilerplate.”

administrative judge finds exhibit #3 established that subject property was appraised as follows for tax year 2004:

Land Value	\$269,300
Improvement Value	\$379,500
Total Value	\$648,800
Assessment	\$162,200

As noted above, the administrative judge finds that the assessor originally appraised subject residence at \$508,400 for tax year 2005.

The administrative judge recognizes that the State Board of Equalization has historically ruled square footage errors are correctable under Tenn. Code Ann. § 67-5-509. Those cases, however, typically involved situations wherein the parties agreed on the proper square footage and the reason for the error. The administrative judge finds that analyzing an appraisal report, sketch and aerial imagery involves significant judgment and discretion. The administrative judge finds that such an analysis fundamentally differs from situations involving mathematical miscalculations or erroneous physical descriptions.

Based upon the foregoing, the administrative judge finds that the assessor's revised appraisal of \$1,299,100 should be set aside and the original appraised value of \$777,700 reinstated for tax year 2005.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2001:

Tax Year 2005

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$508,400	\$777,700	\$194,425

Tax Year 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$269,300	\$955,700	\$1,225,000	\$306,250

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

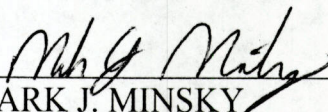
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within**

thirty (30) days from the date the initial decision is sent.” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of July, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Hunter Humphreys, Jr., Esq.
Tameaka Stanton-Riley, Appeals Manager